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Before the
FEDERAL COMMUNICATIONS COMMISSION ORIGINAL
Washington, D.C. 20554

In the Matter of	)	
	)	
The Merger of MCI Communications	)	GN Docket No. 96-245
Corporation and British	)	
Telecommunications plc	)	

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Federal Communications Commission
Office of Secretary

REPLY COMMENTS
OF WORLDCOM, INC.

Prepared by:

Robert S. Koppel
Vice President, Legal and
Regulatory Affairs
WorldCom, Inc.
15245 Shady Grove Road
Suite 460
Rockville, Maryland 20850-3222

Counsel:

Andrew D. Lipman
Adam L. Kupetsky
Swidler & Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, DC 20007

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I. INTRODUCTION

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby responds to the opposition and replies to comments on the application jointly submitted by MCI Communications Corporation ("MCI"), BT North America ("BTNA") and British Telecommunications plc ("BT") (together, "BT/MCI"), seeking Commission approval to transfer control of MCI's authorizations to BT ("BT/MCI merger").[1] The arguments set forth by BT/MCI and the U.K. government in the opposition round of this proceeding do not alleviate WorldCom's concerns that the proposed merger of BT and MCI would provide the resulting company, Concert, with the incentive and ability to leverage BT's control of bottleneck facilities in the United Kingdom to gain an unfair advantage on

[1] *See* BT/MCI Opposition and Reply (filed February 24, 1997) ("Opposition"); UK Government Comments on Respondents' Comments to the FCC on the Merger of MCI Communications Corporation and British Telecommunications plc (filed February 24, 1997) ("U.K.Comments").

the U.S.-U.K. international route. Accordingly, WorldCom again urges the FCC to adopt appropriate safeguards as a condition of its approval of the proposed merger.

II. BACKGROUND

In its Comments, WorldCom argued that the public interest requires close scrutiny of the BT/MCI merger because of BT's control over bottleneck facilities in the U.K.'s local and international telecommunications markets. WorldCom urged the FCC to condition its approval of the merger on (i) the implementation of measures to ensure that BT/MCI would not abuse its control over access to, and pricing of, submarine cable capacity, backhaul facilities and digital access cross-connect switches ("DACS"); and (ii) the unbundling of BT's local loops in the United Kingdom. WorldCom also urged the FCC to continue to regulate the merged entity as a dominant carrier and to affirm that the International Settlements Policy and the "no special concessions" clause apply to the merged entity, and to affirm, in particular, that MCI may accept no more than its proportionate share of return traffic from BT on the U.S.-U.K. route.

In its Opposition, BT/MCI asserts that the current regulatory scheme in the United Kingdom, as well as the prevailing competitive atmosphere, are sufficient to prevent anticompetitive actions by BT in the provision of access to bottleneck facilities. Moreover, both BT/MCI and the U.K. government argue that the FCC would be overreaching its jurisdictional bounds and inserting its regulatory presence into the U.K. market if it were to condition approval of the merger.

III. THE FCC HAS AN INDEPENDENT OBLIGATION TO ENSURE THAT THE BT/MCI MERGER IS CONSISTENT WITH THE U.S. PUBLIC INTEREST

At the outset, WorldCom wishes to clarify that it does not ask the Commission to exceed its jurisdiction, or to infringe upon the functions and responsibilities of the U.K. regulatory authorities.

WorldCom emphasizes, however, that the Commission has a statutory obligation to ensure that the proposed transaction is consistent with the U.S. public interest. Accordingly, it is imperative that the Commission adopt and implement appropriate safeguards to ensure that the merged entity cannot act in a manner that would have an anti-competitive effect on the U.S. market.[2]

The FCC must adopt such safeguards notwithstanding the contentions that the U.K. regulatory framework adequately ensures fulfillment of the FCC's goals. WorldCom applauds the pro-competitive policies of the U.K. government. These policies, however, are designed to serve the interests of U.K. citizens. The FCC is charged with serving the public interest of U.S. citizens. While the interests of both citizenry in affordable, advanced telecommunications services may be identical in many instances, the Commission cannot, and should not, rely exclusively on the determination of the U.K. government to protect the U.S. public interest. If the FCC finds that U.K. regulations are effective in meeting the FCC's public interest goals, then the Commission may find that its concerns are satisfied. In all events, though, the FCC must retain jurisdiction over the transaction and continue its oversight of all U.S. carriers, including the merged entity.

IV. BT MUST COMMIT TO PROVIDING ACCESS TO SUBMARINE CABLE CAPACITY, TO SUBMARINE CABLE STATIONS, AND TO BACKHAUL AT REASONABLE AND NON-DISCRIMINATORY RATES, TERMS AND CONDITIONS

A. Submarine Cable Capacity

In its Opposition, BT/MCI observes that there is no *de jure* bar to U.S. carrier ownership of U.K. facilities used to provide public switched telephone service and that, in fact, U.S.

[2] *In the Matter of Sprint Corporation, Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) of the Public Interest Requirements of the Communications Act of 1934, as amended,* ISP-95-002, 11 FCC Rcd 1850 (1996).

carriers already own such facilities. But U.S. company ownership of U.K. facilities does not mean that the playing field is level. OFTEL's own statistics demonstrate that BT/MCI has by far the most whole-circuit capacity on TAT 12/13, and these figures apparently do not even take into account the amount of half-circuit capacity BT and MCI hold individually.[3] Given its large holdings of capacity, and the current shortage of capacity on the alternate routes, the merged entity would unquestionably be in a superior position to meet the growing demand for bandwidth, and to control the availability of this bandwidth to other companies. In light of this real-world concern, the FCC must require that BT and MCI commit to provide to other carriers on a reasonable and non-discriminatory basis, whole circuit IRUs and half-circuit IRUs now held by BT to correspond with other carriers, including WorldCom.

B. Backhaul

BT/MCI claims in its Opposition that competition among backhaul providers "assures non-discriminatory and competitively-priced access" to backhaul services.[4] But BT/MCI's reliance on existing competition in the market for backhaul services is misplaced. Although both BT/MCI and the U.K. government make much of WorldCom's own backhaul to Land's End, these parties fail to note that WorldCom lacks such access to other submarine cable stations. Even BT/MCI acknowledges OFTEL's assessment that the backhaul market in general is only "prospectively"

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[3]It is not clear from the U.K. Government's reply how much of this capacity is owned on a whole-circuit basis, and how much is owned on a half-circuit basis. In order to gauge the impact of the proposed merger on competition in the U.S.-international market, the FCC should require BT/MCI to report these figures.

[4]Opposition at 14.

competitive.[5] In WorldCom's opinion, the backhaul market in the U.K. is unlikely to become competitive for many years for a number of reasons, including the geographic location of cable stations, the lack of available capacity on existing submarine cables, and the high capacity interface requirement (typically STM-1). Thus, BT will continue to have control over this bottleneck facility for the foreseeable future. Accordingly, appropriate safeguards are required to ensure that BT does not leverage this bottleneck to the detriment of competitors.

The lack of competition in the provision of backhaul facilities is vividly illustrated by BT/MCI's failure to provide backhaul services at speeds demanded by customers. In its Opposition, BT/MCI acknowledged that it does not currently sell backhaul in lots of 45 Mbps.[6] While BT/MCI acknowledged that, having "recently received a request from an operator for 34/45 Mbps capacity," it would be compelled to provide such services, it asserted that the requirement was conditioned on its being "technically and economically feasible"[7] to provide the services. This lukewarm commitment provides no meaningful assurance to competitors that they will have timely (*i.e.,* immediate) access to the types of services they require in order to be competitive with the merged entity. It is not sufficient that BT's licensing conditions require BT to offer such capacity if "technically and economically feasible." Instead, it is imperative that BT/MCI commit now to meeting reasonable customer demand for backhaul at different speeds and at a specific price.

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[5]Opposition at 15.

[6]Opposition at 14 n.31.

[7]*Id.*

C. <u>Access to, and Pricing of, DACS</u>

In its initial comments, WorldCom expressed concern about access to and the timing of provision of digital access cross-connect switches ("DACS") by BT.[8] BT/MCI's response in its Opposition provides little comfort for competitors. BT/MCI states that "in normal circumstances" BT can provision additional capacity via DACS in "35 working days," and that six months is an estimated lead time for provision of DACS when "interconnecting at a particular location for the first time."[9]

As an initial matter, BT's statement that it provisions capacity in 35 working days under "normal circumstances" and up to six months for initial interconnections does not constitute a firm commitment to provision capacity expeditiously. WorldCom is concerned that "normal circumstances" may not prevail once the merger is approved, and that BT may use this bottleneck element to the disadvantage of competitors.[10] Nor would 35 days/6 months constitute a reasonable span of time even if BT did commit to it.[11] In order to be reclassified as nondominant for international services, AT&T, which controls bottleneck DACS facilities on the U.S. end, committed to the FCC to "establish standard [circuit activation] intervals that are intended to reduce the current provisioning intervals to 15 days for intra-office and 25 days for inter-office circuit activation. ... AT&T further agree[d] to ... act in good faith to reduce provisioning intervals to 7 days for intra-

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[8]Comments at 16-17.

[9]Opposition at 14 n.31.

[10]WorldCom is also working with OFTEL to address the issue of provisioning intervals.

[11]*See, e.g.,* MCI Telecommunications Corporation, *Ex Parte* Letter, Docket CC No. 79-252, filed April 12, 1996.

office and 20 days for inter-office circuit activation."[12] The FCC should require no less of BT/MCI. BT/MCI must commit to a reasonable time frame for providing these services -- one that approximates BT's required time frame in a hypothetically competitive market, using the AT&T commitments as a guideline.

D. Local Loop Unbundling

In its Opposition, BT/MCI acknowledges the crucial importance of unbundling the local loop under U.S. law.[13] Nevertheless, BT/MCI asserts that the unbundling of the local loop in the U.K. would be inconsistent with OFTEL's policy of encouraging the construction of alternative local loop facilities by firms intending to compete with BT.[14] BT/MCI asserts that "the Commission's review of this Application should not turn on any judgment whether the U.S. or U.K. approach to competitive telecommunications is superior."[15]

Although much of BT/MCI's Opposition is concerned with the merits of the U.K.'s alternative approach, WorldCom respectfully suggests that this analysis misses the point. WorldCom takes no position as to whether OFTEL's policy is superior to the Commission's. Indeed, WorldCom supports the U.K.'s policy in favor of alternative infrastructure competition. WorldCom, which has already undertaken substantial infrastructure construction in the United Kingdom, benefits from such competition. WorldCom rejects, however, BT/MCI's arguments that

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[12]Motion of AT&T Corp. to be Declared Non-Dominant for International Service, Order, FCC 96-209 (released May 14, 1996), Appendix A.

[13]Opposition at 19.

[14]Opposition at 16-21.

[15]Opposition at 21.

this policy should preclude the FCC from imposing an unbundling condition on its approval of the BT/MCI merger. WorldCom reiterates that the FCC has the duty to consider the U.S. public interest in granting the BT/MCI merger. If U.S. carriers cannot compete on an even footing with the merged BT/MCI (which has the only ubiquitous network in the United Kingdom) in the provision of end-to-end services absent access to unbundled local loop elements, then approval of the merger must be conditioned on BT's unbundling of local loops. The U.K. government itself has recognized the importance of such end-to-end services.[16]

In any event, WorldCom submits that requiring BT to unbundle its local loops would promote, rather than be inconsistent with, the U.K. policy objective of encouraging alternative infrastructure construction,[17] because a carrier can use unbundled loop elements as a temporary and supplemental solution before customer demand justifies the construction or purchase of facilities by the carrier. Owning facilities is preferable to "borrowing" them if there is sufficient volume, but the use of unbundled loop elements can act as a critical interim step in the development of a competitive carrier's business. It can also allow the carrier to serve more customers, and more widely-dispersed customers, on an accelerated time table. For example, MFS/WorldCom has invested heavily in local facilities (and will continue to do so), but also seeks to utilize unbundled local loop elements in the near term to supplement this long-term process. As WorldCom pointed out in its initial comments, the growth of the Internet, with its requirements for high-bandwidth video and data transmissions, requires substantial capacity in the local loop in the near term. Unbundled loop elements can address

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[16]*See* U.K.Comments, ¶¶86-87

[17]WorldCom does not address whether alternative infrastructure providers should be required to unbundle their existing or future local loops.

this requirement in the short term while additional facilities are being planned and constructed for the longer term.

In addition, as WorldCom argued in its Comments, the charges for unbundled loop elements can be set at levels that will not discourage construction of alternative local loop infrastructure, or erode the value of existing investment. It is, therefore, not the case that requiring BT to unbundle its local loop will undermine the U.K.'s avowed policy goals.

E. Continued Application of Dominant Carrier Regulation and the International Settlements Policy

The FCC should continue to apply dominant carrier regulation to the combined BT/MCI entity in light of its market power and control of bottleneck facilities on the U.S.-U.K. route. In addition, the International Settlements Policy, and the "no special concessions" requirement, should specifically be applied to the merged entity, and should not be removed unless and until the FCC grants a specific request by the merged entity for a declaratory ruling on an "alternative payment arrangement."

III. CONCLUSION

For the reasons set forth herein, WorldCom respectfully requests that the FCC condition grant of BT/MCI's application for approval of their merger.

Respectfully submitted,

Robert S. Koppel

Robert S. Koppel
Vice President, Legal and Regulatory Affairs
WorldCom, Inc.
15425 Shady Grove Road, Suite 460
Rockville Maryland 20850-3222
(301) 212-7099

Counsel:

Andrew D. Lipman
Adam L. Kupetsky
Swidler & Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, DC 20007
(202) 424-7806

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by hand delivery or by United States first-class mail, postage prepaid, on this 17th day of March, 1997, to the following parties:

Ruth Milkman
Assistant Bureau Chief, International Bureau
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Diane Cornell
International Bureau
Federal Communications Commission
2000 M Street, N.W. - Rm. 800
Washington, DC 20554-0001

Kathryn O'Brien
FCC - International Bureau
2000 M Street, N.W. - Rm. 800
Washington, DC 20554-0001

Troy Tanner
FCC - International Bureau
2000 M Street, N.W. - Rm. 800
Washington, DC 20554-0001

Kelly Cameron
FCC - International Bureau
2000 M Street, N.W., Room 800
Washington, DC 20554-0001

Rudolfo M. Baca, Esq.
Office of Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Daniel Gonzales, Esq.
Office of Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

James L. Casserly, Esq.
Office of Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Donald H. Gips
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W. - Rm. 800
Washington, DC 20554-0001

Bill Kirsch
2000 M Street, N.W. - Rm. 800
Washington, DC 20554-0001

International Reference Center
2000 M Street, N.W. - 1st Floor
Washington, DC 20554-0001

ITS
1919 M Street, N.W.
Washington, DC 20554

Kenneth Stanley
FCC - International Bureau
2000 M Street, N.W., Room 800
Washington, DC 20554-0001

Lawrence Spiwak
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 650
Washington, DC 20554

Carl Willner
United States Department of Justice
Antitrust Division
555 4th Street, N.W., Room 8227
Washington, D.C. 20001

Bill Corbett
Office of the United States Trade
Representative
600 17th Street, N.W.
Washington, DC 20506

Michael Fitch
U.S. Department of State
2201 C Street, N.W.
Washington, DC 20520

Suzanne Settle
National Telecommunications and
Information Agency
Department of Commerce
14th and Constitution Avenue, N.W.
Washington, DC 20230

Francesca West Watson

FRANCESCA WEST WATSON

179726.1